

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 8650

IN THE MATTER OF:

Served April 14, 2005

CHEEKS & SON TRANSPORTATION, INC.,)
Suspension and Investigation of)
Revocation of Certificate No. 415)

Case No. MP-2004-195

This matter is before the Commission on respondent's response to Order No. 8522, served January 24, 2005.

Under the Compact, a certificate of authority is not valid unless the holder is in compliance with the Commission's insurance requirements.¹ Commission Regulation No. 58 requires respondent to insure the revenue vehicles operated under Certificate No. 415 for a minimum of \$1.5 million in combined-single-limit liability coverage and maintain on file with the Commission at all times proof of coverage in the form of a WMATC Certificate of Insurance and Policy Endorsement (WMATC Insurance Endorsement) for each policy comprising the minimum.

Certificate No. 415 became invalid on October 21, 2004, when the \$1.5 million WMATC Insurance Endorsement on file for respondent terminated without replacement. Order No. 8346, served October 22, 2004, noted the automatic suspension of Certificate No. 415 pursuant to Regulation No. 58-02, directed respondent to cease transporting passengers for hire under Certificate No. 415, and gave respondent thirty days to replace the expired endorsement or face revocation of Certificate No. 415. Respondent submitted a \$1.5 million replacement endorsement on November 22, 2004. The effective date of the new endorsement was October 29, 2004.² This means that respondent was without insurance coverage for eight days, from October 21, 2004, through October 28, 2004.

Order No. 8522 gave respondent thirty days to furnish proof of having ceased operations as of October 21, 2004. Inasmuch as respondent's only tariff is for service rendered to clients of the District of Columbia Department of Health, Medical Assistance Administration (DC Medicaid), such proof was to include confirmation from DC Medicaid. According to DC Medicaid's agent for processing carrier invoices, ACS State Healthcare, respondent has submitted

¹ Compact, tit. II, art. XIII, § 7(g).

² The WMATC Insurance Endorsement on file for respondent has been cancelled an additional three times since this proceeding began. Coverage under the current endorsement is set to terminate April 11 under the terms of the most recent cancellation notice. Coverage has so far remained continuous since October 29, however, under two replacement endorsements filed during the interim.

claims for service rendered on ten separate days in November and December 2004 while Certificate No. 415 was suspended.³

Respondent claims that it continued providing transportation while suspended under the belief that a "new insurance certificate" obtained on October 28 through a new broker "voided the original suspension." But Order No. 8346 clearly instructed respondent not to "transport passengers for hire under Certificate No. 415, unless and until otherwise ordered by the Commission." (Emphasis added).

Respondent then claims that it "did not receive any correspondence from the WMATC" concerning this matter "until January 2005". But the record in this proceeding shows that one of respondent's employees signed for Order No. 8346 on October 25, 2004. Indeed, respondent's defense is not that it was unaware of the suspension but that it believed the suspension had been voided.

In any event, the record discloses that respondent's WMATC Insurance Endorsement was cancelled for non-payment of premium. If a carrier fails to make the premium payments necessary to maintain coverage under the WMATC Endorsement, the onus is on that carrier to ascertain when coverage will terminate and refrain from operating thereafter until such time as the carrier has obtained confirmation from the Commission that a replacement WMATC Insurance Endorsement has been filed and accepted.⁴

Respondent shall have thirty days to show cause why the Commission should not assess a civil forfeiture against respondent,⁵ and/or revoke Certificate No. 415,⁶ for conducting operations under an invalid/suspended certificate of authority in violation of Article XI, Section 6(a),⁷ of the Compact and Commission Order No. 8346.

³ According to ACS records, respondent submitted claims for services rendered on Nov. 1, 9, 15, 16, 18, 23, 24, and Nov. 30, and on Dec. 1 and 9, 2004.

⁴ See In re Amna O. Abugusseisa, Trading as AB & B Trans, No. MP-03-50, Order No. 7621 (Dec. 18, 2003) (carrier may not terminate policy, obtain new policy, fail to ensure timely filing of replacement endorsement and claim ignorance of noncompliance with Commission insurance requirements); In re Capital Tours & Transp., Inc., t/a Suburban Airport Shuttle, No. MP-95-88, Order No. 4765 (Feb. 13, 1996) (respondent careless for not ascertaining whether new insurance certificate had been filed with Commission).

⁵ A person who knowingly and willfully violates a provision of the Compact, or a rule, regulation, requirement, or order issued under it, or a term or condition of a certificate shall be subject to a civil forfeiture of not more than \$1,000 for the first violation and not more than \$5,000 for any subsequent violation; each day of the violation constitutes a separate violation. Compact, tit. II, art. XIII, § 6(f).

⁶ The Commission may suspend or revoke all or part of any certificate of authority for willful failure to comply with a provision of the Compact, an order, rule, or regulation of the Commission, or a term, condition, or limitation of the certificate. Compact, tit. II, art. XI, § 10(c).

⁷ That section provides: "A person may not engage in transportation subject to this Act unless there is in force a 'Certificate of Authority'

THEREFORE, IT IS ORDERED:

1. That respondent shall have thirty days to show cause why the Commission should not assess a civil forfeiture against respondent for knowingly and willfully violating Article XI, Section 6(a), of the Compact and Commission Order No. 8346.

2. That respondent shall have thirty days to show cause why the Commission should not revoke Certificate No. 415 for respondent's willful failure to comply with Article XI, Section 6(a), of the Compact and Commission Order No. 8346.

3. That respondent may submit within 15 days from the date of this order a written request for oral hearing, specifying the grounds for the request, describing the evidence to be adduced and explaining why such evidence cannot be adduced without an oral hearing.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS YATES AND MILLER:



William S. Morrow, Jr.
Executive Director

issued by the Commission authorizing the person to engage in that transportation." (Emphasis added).

